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Supreme Court of the United States

October Term, 1945.

No. 505.

GEORGE C. HOLMBERG, FRANK C. BALL, CARL J. EASTERBERG, GEORGE F. HARDIE and PAT B. MORRIS, on behalf of themselves and all other creditors of the SOUTHERN MINNESOTA JOINT STOCK LAND BANK OF MINNEAPOLIS,

Petitioners,

AGAINST

CHARLES ARMBRECHT and GILBERT MILLER, BARBARA RICHARDS MICHEL, MURIEL RICHARDS PERSHING and DOROTHY RICHARDS HIRSHON, as Executors under the Last Will and Testament of JULES S. BACHE, deceased,

Respondents.

PETITIONERS' BRIEF.

EDMUND BURKE, JR.,
Counsel for Petitioners.

FRANKLIN S. WOOD,
CLARENCE FRIED,
Of Counsel.

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I.

Opinions of Courts Below.

The opinion of the District Court was rendered on November 1, 1944 (R. 99). Official citation is not yet available. The opinion of the Circuit Court of Appeals is reported in 150 Fed. (2d) 829.

II.

Grounds of Jurisdiction of the Supreme Court.

1. The date of the judgment to be reviewed is July 13, 1945 (R. 122).

2. The statutory provision which is believed to sustain the jurisdiction of the court is 28 U. S. C. A. 347.

3. The cause of action asserted by petitioners as creditors of the Southern Minnesota Joint Stock Land Bank of Minneapolis, is created by a federal statute (12 U. S. C. A. 812) and the ruling by the Circuit Court that this cause of action is governed by a state statute of limitations is a decision of a federal question which vitally affects all rights created by federal statutes and is probably in conflict with the decisions of this court and the questions involved are substantial.

4. The case believed to sustain said jurisdiction is as follows: *Wyman* v. *Wallace*, 201 U. S. 230.

III.

Statement of the Case.

The Southern Minnesota Joint Stock Land Bank of Minneapolis closed its doors on May 2, 1932, when the Federal Farm Loan Board appointed a receiver in accordance with the provisions of the Federal Farm Loan Act (R. 34).

Creditors of the bank, the same complainants in this case, instituted an action in the United States District Court, District of Minnesota, Fourth Division on July 28, 1932. In that action the complainants sought to obtain

a judgment against all stockholders of the bank resident in the State of Minnesota and elsewhere. Service was made upon the stockholders who could be found or were residents of the State of Minnesota. All other Stockholders were served by publication and by mail pursuant to the order of United States District Judge Gunnar H. Nordbye, dated July 28, 1932 (R. 35). The affidavit of mailing states that a copy of the order was sent to Charles Armbrecht at the address listed on the stock books of the bank (R. 85). The action in the Minnesota District Court extended over a period of three years and resulted in the entry of a decree on April 20, 1935, which determined that an assessment of 100% against the stockholders was necessary and provided for the appointment of an equity receiver to enforce the assessment on behalf of the creditors against the stockholders of the bank (R. 35, 46).

The matter was then referred to attorneys in New York for such further proceedings as were necessary to carry into effect the decree of the Minnesota Court. On October 19, 1935, a demand letter was sent to the defendant Charles Armbrecht c/o J. S. Bache & Co., 42 Broadway, New York City (Plaintiffs' Exhibit 9). On or about December 11, 1935, proceedings were instituted in the United States District Court for the Southern District of New York for the appointment of an ancillary equity receiver upon the theory that the judgment obtained in the domiciliary jurisdiction constituted *res adjudicata* as to the assets and liabilities of the bank and the necessity for a 100% assessment against stockholders. In that action, besides the bank and the receiver, three New York stockholders were named. The proceedings were opposed by one of the stockholders and his motion to dismiss the bill was denied and a motion to strike the answer of the defendant and for the appointment of Ervin J. Friede as ancillary receiver was granted by order of U. S. D. J. Robert P. Patterson, dated April 23, 1936 (R. 36).

After the appointment of Ervin J. Friede, actions at law were instituted in his name as ancillary receiver against the stockholders. One of such actions was entitled *Ervin J. Friede, as Ancillary Receiver for Creditors of the Southern Minnesota Joint Stock Land Bank of Minneapolis*, Plaintiff, v. *Charles Armbrecht*, Defendant, index No. L65-73, in the Southern District Court of New York. Defendant could not be served at the office of J. S. Bache & Co., but was served at 2565 Marion Avenue (R. 37), an address furnished by the process server and purportedly received from the City Directory (R. 59). Said service was made on August 13, 1936. The defendant defaulted in pleading. A statement for judgment was prepared and verified October 27, 1936, but was never entered due to the necessity of proving the bill of complaint against the defendant *pro confesso*, which became impossible after the decision by this Court (R. 37).

In the meantime an appeal having been taken to the Circuit Court for the Second Circuit from the decree of Judge Patterson, and a decision having been rendered by the Circuit Court on December 24, 1936, the appointment of Ervin J. Friede as ancillary receiver was declared ineffective, and the order of Judge Patterson reversed with leave to complainants to serve an amended complaint. The opinion of the Circuit Court even went so far as to state that the District Court of Minnesota had no power or authority to appoint an equity receiver (*Holmberg* v. *Carr*, 86 Fed. [2nd] 727) (R. 37).

Thereafter and pursuant to the Order on Mandate made by Judge Patterson dated February 19, 1937, an amended bill of complaint was prepared and filed on or about April 17, 1937 (R. 38). All actions instituted in the name of Ervin J. Friede were discontinued, and in the amended complaint brought on behalf of the complainants, all stockholders of the bank were named. There were approximately 176 defendants (R. 84). The name of

Charles Armbrecht appears in Exhibit A annexed to the complaint as the record owner of 100 shares of stock, and the address given on the Exhibit is the one that appeared upon the books and records of the bank, to wit: c o J. S. Bache & Co., 42 Broadway, New York City (R. 84).

The complaints were delivered to the U. S. Marshal with instructions to serve all defendants, and were returned by the Marshal reporting service could not be made on Charles Armbrecht, together with a check in the sum of $103.40 representing the balance of the deposit given to the Marshal for his services (R. 84). After the return by the Marshal, a private process server was again requested to locate the defendant and reported that he was no longer at 2565 Marion Avenue (R. 50). Attempts by Clarence Fried, an attorney in the office of Franklin S. Wood, to locate the whereabouts of said defendant were equally unsuccessful (R. 40).

The case of *Holmberg* v. *Anchell* proceeded to trial before the late Judge Woolsey and lasted almost two months (R. 40). On or about August 20, 1938, Judge Woolsey handed down his decision wherein he found that the liabilities of the bank exceeded its assets to the extent of $11,455,828.42 (*Holmberg* v. *Anchell*, 24 Fed. Sup. 594). After hearings regarding findings of fact and conclusions of law, judgment was entered on January 23, 1939. An appeal was taken from that judgment, and although the briefs were filed prior to November 9, 1939, it was not finally determined until June 5, 1940, because in the meantime the same questions of law as to laches and the applicability of the New York State statute of limitations involved in this case were awaiting decision in the Supreme Court of the United States (*Russell* v. *Todd*, 309 U. S. 280) and in the New York Court of Appeals (*Mencher* v. *Richards*, 283 N. Y. 176). (R. 41).

Complainants then examined various defendants in supplementary proceedings and made investigations for the

purpose of winding up liquidation of the bank and bringing in as defendants those stockholders who were not served in the previous action (R. 42).

In December of 1941 or January of 1942 as a result of this investigation, information was received from the process server that Charles Armbrecht was a retired employee of J. S. Bache & Co. receiving a pension and that when he was employed he held a subordinate position with that firm (R. 42).

Up to that time the complainants had no information as to the identity of Charles Armbrecht, nor did they have any proof that the Charles Armbrecht who resided at 2565 Marion Avenue and who was served and defaulted in 1936 was the same Charles Armbrecht who appeared as the owner of record of the stock of this bank (R. 54). After correspondence and discussion with the Minnesota attorneys, it was agreed to institute suit against J. S. Bache & Co. as the real owners of the stock registered in the name of Charles Armbrecht (R. 42) on the information then acquired that Charles Armbrecht was a retired employee of that firm.

Shortly after the complaint was served, the attorneys for the defendant, Morton F. Stern, sued as a partner of J. S. Bache & Co. requested an extension of time which was granted upon the condition that the address of Charles Armbrecht be disclosed. The address given, 1971 Webster Avenue, was one from which defendant Armbrecht had already moved (R. 44). However, service was purportedly made at 2980 Valentine Avenue, the home of his son, on May 29, 1943 (R. 44). Prior to this purported service, a registered letter was sent to the defendant Charles Armbrecht c/o J. S. Bache & Co., 36 Wall Street, New York City, and was returned with the notation "not found with care." This was a registered letter with return receipt requested to be delivered to the addressee only (R. 85).

In September, 1942, Mr. Stern was examined at the office of Franklin S. Wood and his examination revealed that 100 shares of stock were charged to the account of Jules S. Bache personally (Par. 12, complaint R. 9. R. 26). This was the first actual information received by the complainants as to the real and beneficial ownership of the stock registered in the name of Charles Armbrecht (R. 58). The case was upon the trial calendar, and after a notice of pre-trial hearing was served, a notice of motion was served on or about March 24, 1943, to quash service of the summons and complaint upon the defendant Charles Armbrecht (R. 44). In the meantime, the trial of the first action had been adjourned pending the outcome of the decision of Judge Hulbert on the question of service. On October 20, 1943, after numerous hearings an order was made quashing service of the summons and complaint on the defendant Charles Armbrecht. Immediately thereupon a summons and complaint in the second action naming Charles Armbrecht and Jules S. Bache as defendants was prepared and filed on November 13, 1943 (R. 44).

In the examination before trial of the defendant, Charles Armbrecht, taken on April 19, 1944, he testified that he never purchased any stock of the bank, that he was never advised by Mr. Jules S. Bache that the stock was to be registered in his name, that he knew nothing about the shares in his name until this action was instituted, that he never used any of his own money for the purchase of stock, that he never had as much as $10,000 (R. 32) and could not respond to a judgment in that amount.

Plaintiffs' Exhibits 1 and 2 (R. 80, 81) show that the 100 shares of stock were issued to the defendant Charles Armbrecht in two certificates of 50 shares each on January 23, 1928. They were transferred from J. S. Bache & Co. to Charles Armbrecht and the cancelled certificates (R.

90-97) each bear a stamped statement which reads as follows:

> "We hereby certify that the transfer of the within shares to the names indicated by the star is made solely to complete the purchase made by us for our customer, and we have no ownership or interest therein.
>
> J. S. Bache & Co.
> 42 B'way
> N. Y."

Paragraph Tenth of the complaint alleges that the transfer to Charles Armbrecht was fraudulent and that the name of the latter was used as a nominal party or "dummy" for the sole purpose of avoiding the statutory liability imposed by the Federal Farm Loan Act (R. 8).

In paragraph 2 of the answer of Jules S. Bache (R. 14), the beneficial ownership by said Jules S. Bache of the stock in the record name of Charles Armbrecht is admitted. As early as October, 1931, this stock registered in the name of Charles Armbrecht was charged on the books of J. S. Bache & Co. to the personal account of Jules S. Bache and was so charged until January 3, 1933, when the account was changed in name only "From the long account to the loan account" (R. 72). During all this time the certificates of stock were physically located in the vaults of J. S. Bache & Co. (R. 73).

The trial judge in his opinion stated: "Furthermore, when Bache used Armbrecht as a dummy to suit his own purpose, he forsook any claim to later injury for failure to recognize him as a defendant earlier and that claim now comes with bad grace" (104).

The trial in the District Court was had without a jury and a judgment was rendered by the Trial Court in favor of plaintiffs and against the defendants in the sum of

$10,000. The Trial Court found as a fact that plaintiffs were not guilty of laches; that Charles Armbrecht was used as a "dummy" by respondent Jules S. Bache; that defendants were guilty of inequitable conduct; and that laches could not be invoked by defendants who were in hiding until they were discovered by plaintiffs (R. 104). On appeal from said judgment the Circuit Court of Appeals for the Second Circuit reversed the decree of the District Court on the authority of *Guaranty Trust Company of New York* v. *York*, 65 Sup. Ct. 1464. None of the findings of fact made by the District Court were disturbed, the Circuit Court of Appeals having reversed the decree of the Trial Court solely as a matter of law on the ground that under the ruling of this court in the *Guaranty Trust* case the New York State statute of limitations was absolutely binding upon the Federal Court (R. 113-121).

IV.

Specification of Errors.

1. The Circuit Court of Appeals erred in holding that this action was governed by the New York State statute of limitations.

2. The Circuit Court erred in its unwarranted extension of the rule enunciated by this court in the case of *Guaranty Trust Company* v. *York*, 65 Sup. Ct. 1464.

3. The Circuit Court erred in its inferential holding that the cause of action accrued on May 2, 1932.

V.

Summary of Argument.

1. This action is predicated upon a Federal statute creating a right solely cognizable and enforceable in equity and is governed by the doctrine of laches.

2. The undisturbed findings of fact made by the Trial Court are inconsistent with any ruling that the plaintiffs were guilty of laches or that the cause of action is barred by any state statute of limitations.

VI.

Argument.

POINT I.

Joint stock land banks are organized under an Act of Congress (12 U. S. C. A. 811). The liability of stockholders in a joint stock land bank is created by a Federal Act (12 U. S. C. A. 812) which reads as follows:

> "Shareholders of every joint-stock land bank organized under this chapter shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares. July 17, 1916, c. 245, 16, 39 Stat. 374."

After years of litigation, the law regarding joint stock land banks became crystallized. It is now undisputed that this action is enforceable only in equity and there is no concurrent remedy at law: (*Wheeler* v. *Green*, 280 U. S. 49; *Russell* v. *Todd*, 309 U. S. 280; *Christopher* v. *Brusselback*, 302 U. S. 500; *Brusselback* v. *Cago*, 85 Fed. [2d] 20; *Holmberg* v. *Carr*, 86 Fed. [2d] 727).

The distinguishing feature of this type of action was lucidly stated by Chief Justice Stone in *Russell* v. *Todd* as follows (p. 286):

> "It is for this reason that there is a divergence between the procedure for recovering assessments of shareholders of national banks, and that for enforcing the liability of shareholders in a Federal land bank. In the latter case there is no legal remedy, the relief being afforded exclusively in equity. The test of the inadequacy of the legal remedy prerequisite to resort to a Federal Court of equity is the legal remedy which Federal rather than State courts afford. *Di Giovanni* v. *Camden F. Ins. Asso.*, 296 U. S. 64, 80 L. ed. 47, 56 S. Ct. 1; *Atlas L. Ins. Co.* v. *W. I. Southern*, 306 U. S. 463, 83 L. ed. 987, 59 Ct. 657. And the jurisdiction of Federal courts of equity, as determined by that test, is neither enlarged nor diminished by the names given to remedies or the distinction made between them by State practice. *Stratton* v. *St. Louis, S. W. R. Co.*, 284 U. S. 530, 534, 76 L. ed. 465, 469, 52 S. Ct. 222."

To apply a state statute of limitations to the instant case, upon the authority of *Guaranty* v. *York*, is to disregard the admonition of Mr. Justice Frankfurter at the very beginning of that opinion:

> "We put to one side the consideration relevant in disposing of questions that arise when a federal court is adjudicating a claim based on a federal law" (65 Sup. Ct. 1465).

In the present action a federal court was adjudicating a claim in equity based on a federal law.

Since an early date the phrase "trials at common law" in the Rules of Decision section of the Federal Judiciary Act of 1789 (28 U. S. C. A. 725) was held not to include suits in equity. *Robinson* v. *Campbell*, 3 Wheat 212, 4 L. Ed. 372; *U. S.* v. *Howland*, 4 Wheat 108, 4 L. Ed. 526. In

Russell v. *Todd*, 309 U. S. 280, 287, this was tersely reaffirmed. "The Rules of Decision Act does not apply to suits in equity".

The barometer used in determining whether a suit in equity should be barred has always been laches and not strictly speaking an arbitrary period of time as fixed by a statute of limitations and in considering the former mere lapse of time did not constitute laches except when it was shown to have resulted in a prejudice to the defendant. *Southern Pacific* v. *Bogert*, 250 U. S. 483, 488-490; *St. Louis* v. *Spiller*, 14 Fed. (2nd) 288, aff. 274 U. S. 304. The doctrine of laches was somewhat limited in its measure by applying statutes of limitations by analogy. *Benedict* v. *City of New York*, 250 U. S. 321, *Kirby* v. *Lake Shore & Michigan Southern R.R.*, 120 U. S. 130, *Early* v. *City of Helena*, 87 Fed. (2nd) 831. Nevertheless, statutes of limitations so applied are mere guides in determining whether a plaintiff has been guilty of laches. For, in the final analysis laches is considered according to the facts and circumstances of each particular case. *Abrahams* v. *Ordway*, 158 U. S. 416.

The general rules relating to the doctrine of laches were well stated in *St. Louis & U. S. F. R. Co.* v. *Spiller*, 14 Fed. (2nd) 284, 288, as follows:

> "Laches is an equitable doctrine, not controlled by or dependent upon statutes of limitation, although courts quite generally consider the time fixed by such statutes in actions at law of like character as having some bearing on the pertinency of the doctrine of laches, or, perhaps more accurately stated, on the burden of proof with respect thereto.
>
> The applicability of the doctrine of laches is dependent upon the circumstances of each particular case. (Citing cases.)
>
> Mere lapse of time does not constitute laches. In addition, it must appear that something has oc-

curred that would make it inequitable to grant the relief prayed for. (Citing cases.)

Laches cannot exist as to a party, unless he has legal knowledge of the facts affecting his rights. *Galliher* v. *Cadwell*, 145 U. S. 368, 12 S. Ct. 873, 36 L. Ed. 738.

The doctrine of laches is to assist and not to defeat justice—it is to be determined by considerations of justice. (Citing cases.)"

Nothing that was said or held in *Erie* v. *Tompkins*, 304 U. S. 64, *Ruhlin* v. *New York Life Ins. Co.*, 304 U. S. 202, *Russell* v. *Todd*, 309 U. S. 280, or *Guaranty Trust* v. *York*, 65 Sup. Ct. 1464, requires the absolute application of statutes of limitations as measuring rods in actions exclusively cognizable in equity in federal courts, based on a federally created right. None of the aforementioned cases, except *Russell* v. *Todd*, involved or affected rights under federal statutes. *Russell* v. *Todd*, did involve a federal statute, but was the ordinary case where, nothing else appearing, courts of equity apply statutes of limitations by analogy.

On the other hand, in *Deitrick* v. *Greaney*, 309 U. S. 190 and in *D'Oench D. & Co.* v. *Federal Deposit Ins. Corp.*, 315 U. S. 447, which involved rights created under federal statutes, state laws were held inapplicable.

In the *Deitrick* case the defendant in a suit on a promissory note set up want of consideration and illegality as a defense to the action and this court said (p. 196):

"It is a principle of the widest application that equity will not permit one to rely on his own wrongful act, as against those affected by it but who have not participated in it, to support his own asserted legal title or to defeat a remedy which except for his misconduct would not be available."

A major point, discussed in the briefs and arguments was, did Massachusetts law preclude respondent from asserting his defense? The court refused to consider the question and held this matter was to be determined by federal law (p. 201):

> "We have recently held that the judicial determination of the legal consequences which flow from acts condemned as unlawful by the National Banking Act involves decision of a federal, not a state question."

An interesting analogy may be drawn from the *D'Oench* case because this Court held that a federal court was not bound to follow state law in determining questions with regard to rights created by federal statutes. It then went on to state (p. 457):

> "These provisions (Federal Reserve Act, 12 U. S. C. A. 264) reveal a federal policy to protect respondent and the public funds which it administers against misrepresentations as to the security or other assets in the portfolios of the banks which respondent insures or on which it makes loans" (Parentheses ours.)

By the same token, in the case at bar, under the Federal Farm Loan Act, 12 U. S. C. A. 812, it was the apparent purpose of Congress to protect investors and creditors of joint stock land banks. The policy of Congress in affording this protection and security to creditors was clearly manifested in the retention of the double liability with respect to joint stock land banks although the similar liability with respect to national banks has been abolished (12 U. S. C. A. 64A). As a matter of fact, the double

liability created by the Banking Law of the State of New York has been abolished in New York and was similarly abolished in a majority of other states. Parenthetically, it may be noted that the statement by Mr. Justice Stone in *Russell* v. *Todd*, 309 U. S. 280, 293, that, "In thus giving effect to state statutes of limitations as a substitute or supplement for the equitable doctrine of laches, it must appear with reasonable certainty that there is a state statute applicable to like causes of action", presupposes that there is a "like cause of action" under the New York statutes. We have already indicated the unique features of this type of action. Bearing in mind that the joint stock land bank is almost the only banking institution concerning which double liability is still enforceable, the following statement of the district judge takes on a more cogent meaning, and now applies with greater force (R. 103).

> "The liability of the statute is intended to afflict every shareholder but is enforceable only where each resides and since their wide geographical distribution is normally *a fact*, the remedy would certainly not work out equally and ratably but inequitably as between themselves if the several stockholders found each a shield in his state's statute of limitations." (Italics ours to show correct wording of opinion. Words in record "to affect" erroneous.)

The policy of rejecting state law where it conflicts with or render the federal rules inequitable was approved by this Court in *Clearfield Trust* v. *United States*, 318 U. S. 363, where after pointing out that frequently in its search for applicable federal rule federal courts have occasionally selected state law, it then went on to say, however, that state law would be discarded if inconsistent with federal policy (p. 367):

> "But reasons which may make state law at times the appropriate federal rule are singularly inappropriate here." * * *
>
> "It would lead to great diversity in results by making identical transactions subject to the vagaries of the laws of the several states. The desirability of a uniform rule is plain."

In the same opinion, the court said (p. 367):

> "In absence of an applicable Act of Congress, it is for the federal courts to fashion the governing rule of law according to their own standards."

In the instant case, the federal statute which created the liability did not prescribe either the manner of enforcement or the agency or person to enforce the liability. The procedure was fashioned only afte rlong years of litigation (R. 134). Consequently, in this type of case, in accordance with the well established rule of the federal courts the proper rule to be applied is the rule of laches and whether the measure is t be limited by the qualifying authorities referred to above must depend on the particular facts of this case.

POINT II.

The Trial Court found that the defendants were guilty of inequitable conduct by creating a false and fictitious record ownership to secrete the real and beneficial ownership of the stock in the defunct bank (R. 104). The Trial Court also found that the plaintiffs were not guilty of laches (R. 102), and that the delay was not prejudicial to the defendants (R. 104).

The information which led to the institution of this action was acquired by the plaintiffs in December, 1941 or January, 1942 (R. 102). As a matter of fact, this in-

formation which merely disclosed suspicious circumstances as to the true ownership of the stock registered in the name of Charles Armbrecht did not ripen into "legal knowledge" until September, 1942 as a result of proof obtained at the pre-trial examination of one of the partners of J. S. Bache & Co. (R. 58).

The statement by the court in *St. Louis* v. *Spiller*, 14 Fed. (2nd) 288, that, "Laches cannot exist as to a party unless he has legal knowledge of the facts affecting his rights" is therefore particularly appropriate.

The Circuit Court did not reverse any of the findings of the District Court and yet stated "eleven and one-half years after the bank's failure, this action was commenced against Bache and Armbrecht" (R. 116).

There is an inferential finding by the Circuit Court from the foregoing that the cause of action accrued at the time of the bank's failure. There is nothing in the record to sustain this finding except the bare fact that the bank closed on May 2, 1932. When a cause of action accrues, with reference to stockholders' liability in a joint stock land bank is open to question in the ordinary case. In *Pufahl* v. *Parks*, 299 U. S. 217, 223, this court referred to the statutory liability of stockholders as a "contingent obligation" and said it was "rendered absolute by the Comptroller's action". In the present suit, the mere closing of the bank would not render the obligation absolute. That the assets of the bank are insufficient to pay its liabilities is the factor which converts the contingent obligation to a fixed one. It may be that the cause of action accrues when the bank is completely liquidated by the statutory receiver or when there was a judicial determination of the value of the assets and liabilities, the latter of which was not obtained until April 20, 1935 after three years of litigation (R. 35). But regardless of when the cause of action accrues in the ordinary case, here, by reason of the facts involved the accrual of the cause of ac-

tion is determined by the special rule so well stated by the late Judge John M. Woolsey, in *Holmberg* v. *Anchell*, 24 Fed. Sup. 594, 603, "Laches may not be invoked by parties in hiding until they are found."

This is in accord with the well established principle that the accrual of the cause of action based upon a right created by an act of Congress is controlled by federal law.

In *Momand* v. *Universal Film Exchange*, 43 Fed. Supp. 996, 1010 the court said:

> "In determining whether a cause of action has accrued, the law which governs is the law of the jurisdiction which gives the cause of action, not the law which supplies the applicable period of limitation. *Rawlings* v. *Ray*, 312 U. S. 96, 98, 61 S. Ct. 473, 85 L. Ed. 605. Therefore, in determining when this plaintiff's causes of action accrued, the law which governs is the law of the United States which gives the private right to sue for damages suffered from violations of the Anti-trust laws. On this point Massachusetts or Oklahoma law is not controlling."

To the same effect see *Garvy* v. *Wilder*, 121 Fed. (2nd) 714, 715 where the court said:

> "The date of the maturity of the cause of action is a Federal question."

The question of the accrual of the cause of action arose in *Rawlings* v. *Ray*, 312 U. S. 96, 98 where a receiver of a national bank brought suit to recover on an assessment made by the Comptroller against stockholders. Presumably the action was at law, nevertheless, in reversing the dismissal of the complaint, this court said:

> "The question as to the time when there was a complete and present cause of action so that the

> receiver could enforce by suit the liability imposed by the Comptroller's assessment is a federal question and turns upon the construction of the assessment and the authority of the Comptroller to make it under the applicable federal legislation."

A situation almost identical to that presented in the instant case was involved in *Holmberg* v. *Anchell*, 24 Fed. Sup. 594 where suspicion of the real ownership of stock was revealed by the mere similarity of names and technique adopted by the defendants who were also defendants in another action pending in the same District Court. As to the accrual of the action Judge Woolsey said:

> "If there be any basis for argument to support a claim for laches by the record stockholders there is none by the concealed beneficial owners of stock such as John H. Gertler and Michael J. Devlet. For I hold that, as to them, the plaintiff's right of action did not accrue at least until the complaint was filed in the case of *Brusselback et al.* v. *Cago Corporation et al., supra*, on August 8, 1935, when investigations of the Ota Corporation, stimulated by that complaint, led the plaintiffs herein to make the same allegations in regard to Ota Corporation as the plaintiffs in the *Brusselback* case had made as to Cago Corporation. Laches may not be invoked by parties in hiding until they are found."

The finding by the District Court that the defendants were guilty of inequitable conduct, under the facts of this case, is well sustained by authorities. The transfer by the defendant Jules S. Bache of stock in the Southern Minnesota Joint Stock Land Bank of Minneapolis to an irresponsible record holder is a fraud upon creditors.

In Michie on Banks and Banking, Vol. II, Permanent Edition, Section 136, the author states:

> "A transfer by a stockholder for the mere purpose of avoiding his statutory liability is fraudulent and void, and he remains liable."

In support of this proposition the following cases are cited:

> *Germania Nat. Bank* v. *Case*, 99 U. S. 628;
> *Rankin* v. *Fidelity Ins. Co.*, 189 U. S. 242;
> *Ohio Nat. Bank* v. *Hulitt*, 204 U. S. 162;
> *Stuart* v. *Haydon*, 169 U. S. 1;
> *Peters* v. *Bain*, 133 U. S. 670;
> *Duke* v. *Johnson*, 123 Wash. 43, 211 Pac. 710;
> *Stewart* v. *Collins*, 36 Wyo. 210, 254 Pac. 137;
> *McDonald* v. *Dewey*, 202 U. S. 510.

In the *Germania* case the Supreme Court of the United States stated (p. 631):

> "While it is true that shareholders of the stock of a corporation generally have a right to transfer their shares, [632] and thus disconnect themselves from the corporation and from any responsibility on account of it, it is equally true that there are some limits to this right. A transfer for the mere purpose of avoiding his liability to the company or its creditors is fraudulent and void, and he remains still liable."

In a recent case *McCaslin* v. *Albertson*, 273 N. W. 302, 307, where a transfer was made for the purpose of avoiding the stockholder's liability and the statute which made transfers within 4 months void, the Court after discussing the 4 months provision ruled that it was immaterial whether the transfer was within 4 months or beyond that period of time "provided such transfer was made by the stockholder for the purpose of escaping his statutory liability and thus perpetrating a fraud upon the depositors and other creditors of such banking institution."

In the instant case the use of the name of Charles Armbrecht, a subordinate employee of J. S. Bache & Co., with full knowledge that he was wholly unable to respond for a judgment in the sum of $10,000 points to one inescapable conclusion, namely, that the transfer to Charles Armbrecht was for the purpose of avoiding the statutory liability.

In the *McCaslin* case, the Court at page 306 said:

> "The intent to avoid liability may be inferred from the facts and circumstances surrounding the transfer and this would be true notwithstanding the testimony of the appellant Martin that the transfer was made in good faith, to discharge obligations owing to him by his wife, and not for the purpose of avoiding liability."

Whatever questions of fact existed at the trial, have been determined adversely to the defendants and the findings were in no way disturbed by the Circuit Court. If the findings of the trial court are to be disregarded and the doctrine of laches held to be rigidly circumscribed by state statutes or judicial decisions the federal courts and the administration of federal laws and policy would be at the complete mercy and under the absolute control of state legislatures seeking to protect their own residents from liabilities of national consequence. We doubt that any such result was intended by this court or by any congressional mandate.

Respectfully submitted,

EDMUND BURKE, JR.,
Counsel for Petitioners.

FRANKLIN S. WOOD,
CLARENCE FRIED,
Of Counsel.